

CITY OF DELTA, UTAH
PLANNING & ZONING COMMISSION SPECIAL MEETING
NOVEMBER 19, 2012

PRESENT

Vance Bishop	Chairman
Linda Beard	Commission Member
Rand Crafts	Commission Member
Alan Johnson	Commission Member
Steven Pratt	Commission Member
Linda Sorensen	Commission Member
Tom Stephenson	City Council Representative
Roger Zeeman	Commission Member

ABSENT

Alan Riding	Code Enforcement Officer
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ALSO PRESENT

Karen Johnson	P&Z Secretary
Ken Clark	Acting Code Enforcement Officer
Todd Anderson	City Attorney
Jamie Hall, Attorney	SBA Communications Corp.
Dean Draper	Millard County Chronicle/Progress
Howard & Betty Jo Western	City Residents
Rob & Jill Droubay	City Residents
Gayle Bunker	Delta City Mayor
Gregory Jay Schafer	Delta City Recorder
Brenna Fleming (via electronic communication)	Gogo Communications

Chairman Bishop called the meeting to order at 7:00 p.m. He stated that notice of the time, place and agenda of the meeting had been posted at the City Building, on the Utah Public Notice website and Delta City website, and had been provided to the Millard County Chronicle/Progress and to each member of the Planning & Zoning Commission at least two days prior to the meeting.

BUSINESS

KEN CLARK, CODE ENFORCEMENT OFFICER: REQUEST FOR DETERMINATION AS TO: 1) WHETHER THE BUILDING PERMIT APPLICATION OF HERCA TELECOMM SERVICES, INC. IS AN ALLOWED USE WITHIN A RURAL RESIDENTIAL ZONE, AND 2) WHETHER THE BUILDING PERMIT APPLICATION IS AN EXPANSION OF A NON-CONFORMING USE

Chairman Bishop advised Commission Members that this meeting is the result of issuance of a

building permit which has been protested by adjacent property owners.

Chairman Bishop noted that discussion will be limited to the two specific items stated on the agenda; namely, 1) whether the building permit application of Herca Telecomm Services, Inc. is an allowed use within a Rural Residential Zone and, 2) whether the building permit application is an expansion of a non-conforming use.

Chairman Bishop stated that we have some adjoining property owners in attendance, as well as Jamie Hall, representing SBA Communications, and Brenna Fleming, representing Gogo Communications, is participating in the meeting by telephone.

Chairman Bishop requested that City Attorney Todd Anderson present information and background on behalf of the City. City Attorney Anderson advised Commission Members that SBA Communications Corp. ("SBA") is the owner of the communications tower referred to. SBA is leasing space for the tower from a local landowner. Gogo Communications ("Gogo") wants to sub-lease space at the site to add additional equipment and co-locate their antennas on the existing tower. It was the opinion of City staff that the equipment building was an accessory structure and not an expansion of an existing non-conforming use. By way of clarification, as of this time, a building permit has not been issued and the City is awaiting a decision on the zoning issue. The issuance of the building permit was questioned before it was actually issued and it was determined that the zoning issue needs to be decided before a building permit can be issued.

Chairman Bishop invited Jamie Hall, representing SBA Communications, to provide information regarding their position on the matter being discussed. Mr. Hall noted that, as previously mentioned, SBA is the owner of the communications tower being discussed and stated that Brenna Fleming, of Gogo Communications, is available on the telephone. Mr. Hall summarized the content of a letter he had sent to the Planning & Zoning Commission earlier today via facsimile and electronic mail. Chairman Bishop advised Mr. Hall that Commission Members had been given a copy of the letter when they arrived at the meeting but had not had a chance to read the letter. SBA Communications supports the recommendations and conclusions of the Delta City Code Enforcement Officer and believes that the addition of a single prefabricated equipment shelter is properly categorized as an accessory structure (unoccupied) as outlined in the zoning ordinance. The equipment shelter does meet the criteria of an accessory structure and is clearly incidental to and customarily found in connection with a communications tower. It is operated and maintained for the benefit of the principal use, which is a telecommunications tower and it is not a dwelling unit.

SBA also supports the Code Enforcement Officer's conclusion that the addition of the new shelter is not an enlargement or expansion of a non-conforming use. Chairman Bishop asked if the height of the proposed shelter will rise above the existing fence. Mr. Hall asked Brenna Fleming to answer the question regarding the height of the equipment shelter. Ms. Fleming stated that the height of the actual shelter is eleven feet, including a light colored skirting at the top, used as a roof. The physical height of the shelter is ten feet, with the roofing structure above the shelter.

Mr. Hall did not know the height of the fence but felt that the shelter would rise above the existing fence. Ms. Fleming added that the height of the fence is eight feet, with an additional 12" of barbed wire above the fence, for an overall height of approximately nine and one-half feet. Mr. Hall stated that the Middle Class Tax Relief and Job Creation Act of 2012 (the "Act") requires approval of a modification, in its entirety, not just the collocation of new transmission equipment on the tower. The Act is not limited to collocation of transmission equipment but the modification, in its entirety, must be approved if it "does not substantially change the physical dimensions of such tower or base station" and involves collocation.

Mr. Hall added that the Act does not specifically define some terms or concepts, but the Federal Communications Commission (FCC) has defined "substantial increase in the size of the tower" as addition of "more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter. . . ." Therefore, the addition of one new equipment shelter does not give rise to a substantial change in the physical dimensions of the tower and the Act therefore requires approval of the building permit in question.

Chairman Bishop invited adjacent property owners to present their information. Property owner Rob Droubay noted that when the existing tower was installed a few years ago it was an eyesore and requested that additions not be made to the existing facility. He asked that Commission Members consider their feelings if they were living in the neighborhood where the communications tower is located. Mr. Droubay believed there was an agreement that there would not be a building constructed on the property. Chairman Bishop and Commission Member Crafts noted that neither the minutes of the meeting where the conditional use permit was granted for the tower, nor the conditional use permit itself, had reference to any agreement regarding a building. Chairman Bishop asked Mayor Gayle Bunker if he had any knowledge of an agreement that a building not be constructed on the property. Mayor Bunker stated that the reason a building was not constructed is that the company installing the communications tower decided not to place a building on the property. Mayor Bunker had no knowledge of any agreement with adjacent property owners regarding construction of a building. Chairman Bishop read the conditions placed on the original conditional use permit, which included: 1) The equipment building shall be constructed in an earth tone color approved by Delta City and, 2) The area shall be enclosed with chain link fence. Mr. Droubay felt that the communications tower diminished adjacent property values and that expansion of the tower should not be allowed. Commission Member Linda Beard asked Mr. Droubay when he had begun his subdivision. Mr. Droubay said he had started the subdivision in 2003 or 2004 and there was one telecommunications tower already in place but he understood that the property was zoned so that they would be protected from future towers. Chairman Bishop noted that zoning on the property now excludes telecommunication towers but previous to adopting the new zoning ordinance earlier this year that was not the case.

Howard and Betty Jo Western addressed Commission Members. Mr. Western stated that Gogo is a provider of in-flight internet service and has no effect on local cellular telephone service. Mrs. Western stated that she is currently a member of the Delta City Council and is a homeowner in the

area being discussed. Mrs. Western said she had received a copy of the T-Mobile site plan in which the proposed building was removed from the site. Mr. Western stated that the proposed plan for the telecommunications tower includes adding gates on the north side of the property, which will bring all traffic to the tower on the street in front of their home. Mr. Western complained that the generator for the communications tower runs at all hours of the night and questioned whether the generator noise exceeds that allowed by Delta City's noise ordinance. Mr. Western also complained that his home is in the fall zone of the tower, the language of the maintenance people is unacceptable, the tower is unsightly and addition of a building will make it more unsightly, it is not conducive to "our" zone, it is not fair to the citizens, there are health issues involved, and they have lost property value as a result of the tower.

Mrs. Western reviewed several sections of the recently adopted Delta City Zoning Ordinance, including the definition of an "accessory building, unoccupied" and stated that there is not a principal building on the property. Mrs. Western read definitions of non-complying structure and non-conforming structure and stated that she feels the proposed building creates an expansion of a non-conforming use. Mrs. Western also referred to information she obtained from a Utah League of Cities and Towns Conference indicating that a non-conforming use cannot be expanded upon and quoted other material she had obtained stating that antennas can be collocated on a tower if there is already a building in place but cannot collocate if there is not an existing building. Mrs. Western also quoted from a municipal attorney who said that if a new carrier wants to collocate their antennas on an existing tower, they are likely to need a new base station, which does not fall within the new restrictions. Mrs. Western questioned the constitutionality of some of the new laws that have been enacted and noted that this antenna is to provide internet service for airline passengers, not to provide better cellular telephone service for local residents. Mr. Western expressed concern that, if the building permit is granted, workers will be parking on a subdivision street, which is thirty feet wide, thus creating traffic problems. He was also upset about having to deal with the generator running at the tower. Mr. Western questioned whether the contractors who have been working at the site are licensed contractors.

Brenna Fleming, of Gogo Communications, advised those present that the contractors who were on-site were licensed in the State of Utah and required to follow Utah construction guidelines. In addition, Ms. Fleming stated that Gogo Communications does not simply provide internet service for airline passengers. They provide important communication services for various airlines who use the service to fly safely via communication with ground crews, from pilot to pilot and to supply communication from airplanes, ground crews and pilots at all times. It is an important service that government also uses in their homeland security program. As far as the facility itself, Gogo Communications complies with any and all state and local requirements. The tower owned by SBA Communications is useable and meets with the specific needs for Gogo antennas. Cellular telephone service provides transmission on the ground and Gogo's service provides transmission into the air, which is needed in this area to keep communication available for airline guidance systems. Various towers were considered prior to making the decision to use the SBA tower because it most closely fits the necessary criteria for collocation.

There was additional discussion between Ms. Fleming and the Westerns regarding the building rising higher than the fence and that the building would be an expansion of the current property use.

Commission Member Steven Pratt asked if there had been a building constructed on the site that has been removed. Mr. Western responded that there never had been a building on the site but there is already a building at the tower located directly west of the SBA tower.

City Attorney Anderson noted that he is not advocating for either side of this issue but stated that we are in agreement that the tower is a legal non-conforming structure and the primary use of the property is a cellular telephone tower. The question is whether or not the intent of the proposed building fits within the requirements of the Middle Class Tax Relief and Job Creation Act of 2012. City Attorney Anderson felt that the structure does fit the requirement of the Act.

Commission Member Steven Pratt asked if the proposed building would need to comply with set back requirements. City Attorney Anderson responded the building would need to meet set back requirements. Code Enforcement Officer Ken Clark noted that the Sheriff's Posse owns the property on which both telecommunication towers are located so the fence is not constructed on the property line.

Ms. Fleming said that there will be no reorientation of the site but they do need to provide a temporary gate for equipment to access the property and they will provide a four foot man gate on the south west corner to allow maintenance people to access the site, but there will be no constant activity at the site because much of the maintenance is done remotely. There was discussion regarding placement of both temporary and permanent gates.

Chairman Bishop advised those in attendance that the discussion needs to return to the two items of business on the agenda. Mr. Hall requested the opportunity to address statements made by Mr. and Mrs. Western. Mr. Hall said that the Middle Class Tax Relief and Job Creation Act of 2012 is relevant because it has direct bearing on this issue. Mr. Hall quoted a portion of the Act stating that "a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The Act goes on to say, "For purposes of this section, the term 'eligible facilities request' means any request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment. . . ." The FCC has defined "collocation" as meaning the mounting or installation of an antenna on an existing tower, building, or structure for the purpose of transmitting and/or receiving radio frequency signal for communications purposes. "Tower" is defined as any structure built with a sole or primary purpose of supporting _____ devices or antennas and their associated facilities. Going on, they state "substantial increase in the size of the tower means the mounting of the proposed antenna would involve installation of more than the standard number of new equipment cabinets for the technology involved." More than antennas are involved in collocation because you cannot have antennas without accessory equipment and the accessory equipment must be inside of something,

which would be either a cabinet or an equipment building. More than four equipment cabinets constitutes substantial increase and more than one equipment building constitutes substantial increase. Mr. Hall reiterated that this communication tower would be used by the airline industry, the American public and the Division of Homeland Security.

Mr. Western interjected a comment that the tower was illegal when it was constructed. Chairman Bishop advised Mr. Western that we are not dealing with that subject at this meeting.

Commission Member Crafts asked if the definition of "Eligible Facilities Request" means any request for modification of an existing wireless tower or base station that involves - a) collocation of any transmission equipment, removal of transmission equipment, or replacement of transmission equipment. City Attorney Anderson said that a court would defer to the FCC definition in matters referring to wireless communication towers.

Chairman Bishop asked whether any member of the Planning Commission had any comments. Commission Member Crafts asked whether an unoccupied accessory building would be allowed in a residential zone. City Attorney Anderson responded that there are two building codes, one which applies to residential buildings and the other applies to commercial buildings. The International Building Code applies to commercial buildings and requires a building permit for a building that exceeds 120 square feet. Under the building code for residential buildings, an accessory building that is under 200 square feet would not require a building permit.

Mr. Hall advised Commission Members that unmanned towers are infrequently visited and the issue of additional traffic should not weigh heavily on the decision of the Commission. Mr. Hall noted that the Verizon Wireless tower adjacent to the SBA tower also has a backup generator so residents may be hearing that generator as well as the SBA generator. These generators run when the power is out in the area and they are checked at least once each month and sometimes more often. Mr. Hall stated that he would be happy to look into and take care of any complaints about the tower that are lodged with the City.

Commission Member Pratt asked if there were any requirements for fuel storage in the different zone areas. He was advised (inaudible).

Mrs. Western requested permission to quote from section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012. She then quoted the section stating, "...request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment . . ." adding, this refers to transmission equipment, not a building. She further stated the Act may include antennas but it does not include a building. Adding a building would be unsightly and would take away from the residential zone. Mrs. Western referred to the section of the Act which refers to removal of equipment or replacement of equipment and stated that this application is adding upon the tower. Mrs. Western complained about the noise of the generator and felt that the collocation agreement does not mean that anything can be collocated anywhere anybody wants to do so.

Commission Member Roger Zeeman asked whether the set back requirements on the front of the property are correct. He was advised that an accessory structure must be set back fifty feet from the front property line. City Attorney Anderson stated that the set back for the building is a problem in this application. Mr. Hall asked if the property was one large parcel which includes both communication towers. He was advised the property is one large parcel but it can only have one side recognized as the "front" side and, if the north side of the property is designated as the front, the building does not have adequate set back from the front property line. Commission Member Pratt noted it appears the building is approximately thirty-two feet from the back of the curb. Commission Member Linda Sorensen said this proposed building sets back farther than the existing building for the other communications tower on the property. Mr. Western interjected that there is no access to the property from the west side. Vehicles which come to the property from the west are using adjacent cemetery property to access the communications towers. City Attorney Anderson noted that if Mr. Hall's description of Federal law is correct, then the Federal law preempts local zoning laws. Mr. Western felt that Federal law was not meant to preempt local laws.

Commission Member Crafts stated that he understood and appreciated the feelings of the residents toward this tower, however, in this particular case, Commission Member Crafts felt that Mr. Hall was correct that the use of the communications tower for communications is not an expansion of its use, however, we need to look at the question closely. It is a non-conforming structure and the Planning & Zoning Commission cannot approve expansion of a non-conforming use in a residential zone. The question is whether this construction itself is an addition of the existing use. He agrees that addition of antennas to the existing tower and installation of equipment at the base of the tower would be existing use but he had a question as to the addition of a building to house that equipment.

Commission Member Sorensen commented that, regarding the use of the building, Section 12-6-6 of Delta City Ordinance No. 12-254 states that any non-complying structure may be repaired, maintained, altered, or enlarged, provided that such repair, maintenance, alteration, or enlargement shall neither create any new non-compliance nor shall increase the degree of the existing non-compliance of all or any part of the structure. Commission Member Sorensen asked if the accessory building would help in maintaining the tower. Ms. Fleming responded that SBA purchased this tower from T-Mobile and their purpose and use is to operate, maintain and rent space on their towers. Whether the tower has one carrier or multiple carriers, the tower will exist. The primary use of the tower was for T-Mobile. The use of other carriers only enhances the viability of the tower and it is a healthy and safe tower. Gogo is asking for the opportunity to utilize the tower to its ability and SBA will maintain the tower, whether it is a simple use or a collocated use. Ms. Fleming vouched for the viability of SBA Communications. Commission Member Sorensen asked if an additional generator would be placed on the property. Ms. Fleming stated that the additional generator would not be housed inside the building and current plans are being discussed but it will probably be placed on the concrete pad. Ms. Fleming said they do not typically operate their generators until or unless they begin to see problems with the electrical connection. Mr. and Mrs. Western interjected a complaint about the increased noise level of an additional generator at the site.

Commission Member Sorensen noted that it appears an additional generator could be placed at the site with or without the accessory building and clarified that Gogo is leasing space on this tower so their request is separate from what was originally constructed on the property.

Commission Member Pratt stated his understanding that any generator on the property would be required to comply with Delta City's noise ordinance. Ms. Fleming clarified that the proposed shelter does not currently include a generator but rather includes backup batteries within the shelter so, a generator is not being proposed at this time. The pad does include space to provide for a generator so they may need to address jurisdictional noise level requirements at a later date. This request for a shelter has a pad for a generator but the generator is not proposed at this point. Chairman Bishop asked, if approved, could a stipulation be added regarding a generator. Mr. Hall stated that SBA and Gogo would stipulate to comply with City noise ordinance, clean up of trash and whatever other conditions may be included. Mr. Hall stated that SBA will work with residents to address problems at the site but, to date, they have not received any complaints but will provide contact information. Ms. Fleming said that, if a generator is proposed at a future time, they will meet with every and all local, county, and state jurisdictional requirements.

Commission Member Crafts stated his opinion that addition of the Gogo equipment is not an expansion of the non-conforming use but the proposed building is an expansion of a non-conforming use.

Chairman Bishop requested that Commission Members be allowed to discuss this matter without interruption of others in attendance but instructed Commission Members to ask any questions they may have of specific individuals. Commission Member Pratt said he had an issue with the building not meeting the set back requirement for an accessory building in its current configuration. Commission Member Crafts felt that if the majority consensus is that the building permit is valid, then building codes must be addressed. Commission Member Sorensen asked if the equipment could be added without constructing the building. Mr. Hall advised Commission Members that T-Mobile was able to enclose their equipment in weatherproof cabinets but Gogo cannot place their equipment in cabinets; they need the building to house their transmission equipment. Commission Member Crafts asked if the equipment could be fit into a 120 square foot building. Ms. Fleming responded that the size of the equipment is larger than 120 square feet. The building that is proposed is as small as will accommodate the equipment. This is a prefabricated building that is used throughout the country at communication tower locations. Commission Member Crafts asked if the measurement is the building footprint or interior measurement. He was advised that the measurement is the footprint of the building.

Commission Member Zeeman asked if the decision on this matter could be made by the City Council. Chairman Bishop stated that the decision of the Planning & Zoning Commission can be appealed to the City Council. Commission Member Zeeman requested that Chairman Bishop repeat the two questions being asked of Commission Members at this meeting. Chairman Bishop stated that the first question is whether the building permit application of Herca Telecomm Services, Inc. is an

allowed use within a rural residential zone and the second question is whether the building permit application is an expansion of a non-conforming use. Commission Member Beard felt that this is not an expansion and that it is an accessory building but she also has an issue with the set back requirement not being met. Chairman Bishop asked if it would be possible to reorient the building location within the fenced area so as to meet set back requirements.

Mr. Hall asked Ms. Fleming if it would be possible to leave the access gate on the west side rather than moving it to the north side so as to effectively make the west side the front side of the property. Ms. Fleming stated the primary reason for the access gate is to quickly get in and out of the compound. The fencing could be temporarily taken down to place the equipment then replace the fence and leave the gate on the west side. Commission Member Sorensen indicated that the property is part of a large parcel so ingress and egress could be provided on the west side. Ms. Fleming clarified the position of the gate and stated that gate placement can be negotiated with the jurisdiction. Commission Member Pratt felt that, if access to the property is not available from the west side, the frontage of the property is the north side. Commission Member Sorensen noted that access could be provided on the west side and close off access on the north side of the property so that maintenance workers would not be accessing the site from subdivision streets. Chairman Bishop clarified that, if the property owner would provide a roadway on the south side of the tower site, then the ingress and egress would be on the southwest side. Commission Member Sorensen noted that there is approximately 150 feet from the tower site to the south property line so there is adequate area to grant access from 350 East Street. This would create a situation where set back requirements would be met.

Adjacent property owners complained that, regardless of where ingress and egress are located, maintenance workers would still use subdivision streets and encroach on adjacent property owners' property. City Attorney Anderson advised adjacent property owners that he can enforce encroachment laws if a complaint is made to law enforcement.

Chairman Bishop noted that, if Commission Members determine that this use is not allowed in a rural residential zone, and the application is not an expansion of a non-conforming use, then we will need to address the set back requirements. If Commission Members determine that this is an expansion of a non-conforming use or it is not allowed in a rural residential zone, then set backs will not be an issue.

Commission Member Crafts asked if the discussion and motion on each of these two questions should be addressed separately. Chairman Bishop felt that the two issues could be combined. Commission Member Pratt remarked that this is a tough decision; his feeling is that the tower should not be in that location to begin with, but it is already there. Commission Member Beard voiced that her heart is with the adjacent property owners but Commission Members are discussing a non-conforming use and she did not feel that the building is an expansion of the non-conforming use; it is an accessory structure. Commission Member Crafts MOVED that Chairman Bishop ask for a voice vote on issue number two, whether the building permit application is an expansion of the non-

conforming use. The motion was SECONDED by Commission Member Steven Pratt. Chairman Bishop asked if there were any comments or questions regarding the motion. There being none, he called for a roll call vote. The vote was as follows:

Linda Beard	No
Rand Crafts	No
Alan Johnson	No
Steven Pratt	No
Linda Sorensen	No
Tom Stephenson	No
Roger Zeeman	Abstain

The motion passed with six votes in favor and one abstention.

Commission Member Steven Pratt MOVED that the building is not allowed, under our current Rural Residential zoning code, given the layout of the plat in its current position. The motion was SECONDED by Commission Member Tom Stephenson. Chairman Bishop asked if there were any comments or questions regarding the motion. Mr. Hall asked, since the basis of the denial is the set back requirements, would Herca Telecomm Services, Inc. be allowed to resubmit modified plans for the building. Chairman Bishop stated his opinion that they would be able to reapply with modified plan. Commission Member Alan Johnson made a SECONDARY MOTION that access to the tower location must be from the west side and not the north side of the property. Mr. Western instructed Commission Members that they cannot do what they are doing. Chairman Bishop advised Mr. Western that it is not Mr. Western's position to tell Commission Members what they can or cannot do. Commission Member Steven Pratt agreed to add language to the motion that access to the property must be from the west side and not from the north side. Commission Member Linda Sorensen SECONDED the motion. Chairman Bishop asked if there was any further discussion regarding the motion. Following further discussion, Commission Member Pratt determined that he would not accept the SECONDARY MOTION. Chairman Bishop stated that Commission Members will be asked to vote on the amended motion and if the amended motion does not pass, we will vote on the primary motion. Commission Member Roger Zeeman asked if we could table the issue. City Attorney Anderson answered that the matter could be tabled. Commission Member Alan Johnson withdrew his SECONDARY MOTION. Commission Member Linda Sorensen agreed to withdraw her SECOND to the secondary motion. Commission Member Crafts felt that the use of the proposed building for additional equipment, by itself, is not an expansion of the use. However, the building permit is for a commercial building within a rural residential zone, which he felt that once the building permit comes to the Planning Commission it becomes questionable. Ms. Fleming began making a reiteration of the process Herca Telecomm Services had followed but was interrupted by Chairman Bishop, who told her the explanation she was making was irrelevant to the decision before the Planning Commission. It is the responsibility of the Planning Commission to determine whether the use is permitted in the rural residential zone, as presented. City Attorney Anderson noted that the zoning ordinance does not differentiate between an accessory building in a residential zone

and an accessory building in a commercial zone. Chairman Bishop asked City Attorney Anderson why the Planning Commission is being asked to make a decision on this question if City staff has already made the determination that the building meets city code. City Attorney Anderson responded that the reason the Planning Commission is being asked to make a decision is because the decision made by City staff has been questioned. City Attorney Anderson explained that the Planning Commission is being asked (inaudible) . Commission Member Crafts asked if the Planning Commission is being asked to make a decision on a non-conforming structure. City Attorney Anderson stated that the Planning Commission is being asked to make a determination as to whether the decision of City staff in this matter is correct.

Chairman Bishop repeated the motion that is on the table, that the proposed building does not meet requirements of the current zoning ordinance because the building does not meet set back requirements. Commission Member Sorensen made reference to the fact that the tower was an appropriate use when it was constructed and was granted a conditional use permit at that time and felt that the proposed building is an accessory structure. Chairman Bishop called for a vote. The motion passed with Commission Members Linda Beard, Rand Crafts, Alan Johnson, Steven Pratt, Tom Stephenson and Roger Zeeman voting in favor and Linda Sorensen voting against.

Chairman Bishop asked if there were any comments, questions or other items to be discussed. There being none, Commission Member Linda Beard MOVED to adjourn the meeting. The motion was SECONDED by Commission Member Roger Zeeman. Chairman Bishop asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Commission Members Linda Beard, Rand Crafts, Alan Johnson, Steven Pratt, Linda Sorensen, Tom Stephenson and Roger Zeeman voting in favor.

Chairman Bishop declared the meeting adjourned at 10:15 p.m.

VANCE BISHOP, Chairman

Karen Johnson, Planning & Zoning Secretary

MINUTES APPROVED: P&Z 12-13-12